MATTHEW V. HERRON #71193
ROBERT M. STEELE #163027
HERRON + STEELE, APC
350 Tenth Avenue, Suite 880
San Diego, California 92101
Telephone: (619) 233-4122
Facsimile: (619) 233-3709

Attorneys for Defendants NATURIPE BERRY GROWERS and THOMAS R. AM RHEIN

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AGROLIBHERE S.A. de D.V., a Mexican Corporation; Plaintiff, v. NATURIPE BERRY GROWERS, an unknown business entity; NATURIPE FARMS, an unknown business entity; NATURIPE FARMS BY HORTIFRUIT, an unknown business entity; HORTIFRUIT, an unkown business entity; HORTIFRUIT IMPORTS, an unknown business entity; THOMAS R. AM RHEIN, an individual; and JUAN FERRARI PALLOMARI, an individual; Defendants.	Case No. 08-CV-01321 JAH NLS **ANSWER TO COMPLAINT AND COUNTERCLAIM** **[DEMAND FOR JURY TRIAL]**
NATURIPE BERRY GROWERS, a California corporation; Counterclaimant, v. AGROLIBHERE S.A. de D.V., a Mexican Corporation; Counterdefendant.	

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Defendants Naturipe Berry Growers ("NBG") and Thomas R. Am Rhein ("Am Rhein") (collectively, hereinafter the "Defendants") for their answer to Plaintiff Agrolibhere S.A. de C.V.'s ("Plaintiff") Complaint, hereby admit, deny, and allege those matters as set forth below:

1. Defendants admit the allegations contained in paragraph 1 of the Complaint.

2. Defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of the Complaint and, therefore, deny the same.

3. In response to the allegations contained in paragraph 3 of the Complaint, Defendants admit that NBG conducts business in the State of California and that Am Rhein is the Vice President of Operations for NBG. Defendants also admit that Defendants Naturipe Farms and Hortifrut conduct business in California. Defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 3 of the Complaint and, therefore, deny the same.

4. In response to the allegations contained in paragraph 4 of the Complaint, Defendants admit that NBG maintains a federal PACA license to transact its business in perishable agricultural commodities in interstate commerce. Defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 4 of the Complaint and, therefore, deny the same.

5. Defendants admit the allegations contained in paragraph 5 of the Complaint.

6. Defendants deny the allegations contained in paragraph 6 of the Complaint.

7. Defendants deny the allegations contained in paragraph 7 of the Complaint.

8. In response to paragraph 8 of the Complaint, Defendants admit that Plaintiff is (and at all times relevant to this action was) a company in the business of growing strawberries, blackberries, and raspberries in Mexico. Defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 8 of the Complaint and, therefore, deny the same.

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9. In response to paragraph 9 of the Complaint, NBG admits that it is a part-owner of Naturipe Farms with Hortifrut and another entity not named in this lawsuit. Defendants deny that the individually named defendants are legally responsible for the handling of the fresh produce at issue in this action.

10. Defendants deny that they entered into any oral agreement with Plaintiff in 2008. Defendants admit that they shipped packaging materials to Plaintiff in or about 2008, but deny that said shipment was related in anyway to the alleged 2008 oral contract. Instead, said shipment related to a prior agreement between Plaintiff and NBG.

11. Defendants deny the allegations contained in paragraph 11 of the Complaint.

12. Since Defendants were not a party to the alleged 2008 oral agreement, Defendants owned no such duties to Plaintiff as described in paragraph 12 of the Complaint. Defendants deny any remaining allegations contained in paragraph 12 of the Complaint.

13. In response to paragraph 13 of the Complaint, Defendants state that the particular PACA subsection cited speaks for itself.

14. In response to paragraph 14 of the Complaint, Defendants state that the particular PACA subsection cited speaks for itself.

15. In response to paragraph 15 of the Complaint, Defendants deny that they had any obligation to provide an accounting or any payment to Plaintiff, because they were not a party to the alleged 2008 oral agreement.

16. In response to paragraph 16 of the Complaint, Defendants deny that they had any obligation to account to Plaintiff arising from the alleged 2008 oral agreement or that they handled Plaintiff's produce.

17. Defendants deny the allegations contained in paragraph 17 of the Complaint.

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FIRST CAUSE OF ACTION

(Breach Of Contract Against All Defendants)

18. In response to paragraph 18 of the Complaint, Defendants re-allege and incorporate by reference each and every admission, denial, and allegation set forth in the proceeding paragraphs as though fully set forth herein.

19. Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. Defendants deny the allegations in paragraph 20 that they agreed to accept Plaintiff's fresh organic raspberries, blueberries and blackberries on consignment for sale in the United States. Defendants do admit that they shipped boxes to Plaintiff, but deny that said shipment in anyway related to the alleged 2008 oral contract. Defendants deny all remaining allegations in paragraph 20 of the Complaint.

21. Defendants deny the allegations contained in paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in paragraph 22 as far as they relate to the alleged 2008 oral agreement. Defendants were not a party to that agreement.

23. Defendants deny the allegations contained in paragraph 23 of the Complaint.

SECOND CAUSE OF ACTION

(Violations Of 7 U.S.C. § 499a et seq. (PACA) Against All Defendants)

24. In response to paragraph 24 of the Complaint, Defendants re-allege and incorporate by reference each and every admission, denial, and allegation set forth in the proceeding paragraphs as though fully set forth herein.

25. In response to paragraph 25 of the Complaint, Defendants admit that NBG is licensed under PACA. Defendants deny that they were a party to the alleged 2008 oral agreement and deny that they transacted at all with Plaintiff concerning organic raspberries, blueberries and blackberries. In response to the remaining allegations in paragraph 25 of the Complaint, Defendants admit that the particular PACA subsection cited speaks for itself.

26. In response to the allegations in paragraph 26 of the Complaint, Defendants admit that the particular PACA subsection cited speaks for itself.

27. Defendants deny the allegations contained in paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in paragraph 28 of the Complaint.

29. Defendants deny the allegations contained in paragraph 29 of the Complaint.

THIRD CAUSE OF ACTION

(Enforcement Of The PACA Trust Against All Defendants)

30. In response to paragraph 30 of the Complaint, Defendants re-allege and incorporate by reference each and every admission, denial, and allegation set forth in the proceeding paragraphs as though fully set forth herein.

31. Defendants deny the allegations contained in paragraph 31 of the Complaint.

32. Defendants deny the allegations contained in paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in paragraph 38 of the Complaint in so far as they are directed toward Am Rhein. With respect to allegations in paragraph 38 relating to Juan Ferrari Pallomari, Defendants are without sufficient information or knowledge to form a belief as to the truth or falsity of the allegations and, therefore, deny the same.

39. Defendants deny the allegations contained in paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in paragraph 40 of the Complaint.

FOURTH CAUSE OF ACTION

(Breach Of Fiduciary Duty Against All Defendants)

41. In response to paragraph 41 of the Complaint, Defendants re-allege and incorporate by reference each and every admission, denial, and allegation set forth in the proceeding paragraphs as though fully set forth herein.

42. In response to the allegations contained in paragraph 42 of the Complaint, Defendants affirmatively state that they were not a party to the alleged 2008 oral agreement. Defendants deny the remaining allegations in paragraph 42 of the Complaint.

43. Defendants deny the allegations contained in paragraph 43 of the Complaint.

44. Defendants deny the allegations contained in paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in paragraph 45 of the Complaint.

FIFTH CAUSE OF ACTION

(Constructive Fraud Against All Defendants)

46. In response to paragraph 46 of the Complaint, Defendants re-allege and incorporate by reference each and every admission, denial, and allegation set forth in the proceeding paragraphs as though fully set forth herein.

47. Defendants deny the allegations contained in paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in paragraph 50 of the Complaint.

51. Defendants deny the allegations contained in paragraph 51 of the Complaint.

SIXTH CAUSE OF ACTION

(Conversion Against All Defendants)

52. In response to paragraph 52 of the Complaint, Defendants re-allege and incorporate by reference each and every admission, denial, and allegation set forth in the proceeding paragraphs as though fully set forth herein.

53. Defendants deny the allegations contained in paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in paragraph 54 of the Complaint.

SEVENTH CAUSE OF ACTION

(Goods Had And Received Against All Defendants)

55. In response to paragraph 55 of the Complaint, Defendants re-allege and incorporate by reference each and every admission, denial, and allegation set forth in the proceeding paragraphs as though fully set forth herein.

56. In response to the allegations contained in paragraph 56 of the Complaint, Defendants affirmatively state that they were not a party to the alleged 2008 oral agreement. Therefore, Defendants were under no obligation to pay Plaintiff for any goods shipped pursuant to the 2008 oral

agreement. Defendants deny that Plaintiff shipped berries to them and that Defendants accepted the delivery of said berries at one of their coolers.

EIGHTH CAUSE OF ACTION

(Unjust Enrichment And Constructive Trust Against All Defendants)

57. In response to paragraph 57 of the Complaint, Defendants re-allege and incorporate by reference each and every admission, denial, and allegation set forth in the proceeding paragraphs as though fully set forth herein.

58. Defendants deny the allegations contained in paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in paragraph 59 of the Complaint. Defendants admit that Plaintiff has asked Defendants to pay the amount it believes is due and owing and to provide a full accounting; however, Defendants had no obligation to take such actions because they were not a party to the alleged 2008 oral agreement.

60. Defendants deny the allegations contained in paragraph 60 of the Complaint.

61. Defendants deny the allegations contained in paragraph 61 of the Complaint.

62. Defendants deny the allegations contained in paragraph 62 of the Complaint.

NINTH CAUSE OF ACTION

(Accounting Against All Defendants)

63. In response to paragraph 63 of the Complaint, Defendants re-allege and incorporate by reference each and every admission, denial, and allegation set forth in the proceeding paragraphs as though fully set forth herein.

64. Defendants generally admit the allegations contained in paragraph 64 of the Complaint, but affirmatively state that they were not a party to the 2008 oral agreement and as such did not engage in any of the alleged conduct during that transaction.

65. Defendants deny the allegations contained in paragraph 65 of the Complaint.

66. Defendants deny the allegations contained in paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in paragraph 67 of the Complaint.

68. Defendants deny the allegations contained in paragraph 68 of the Complaint.

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69. In response to paragraph 69 of the Complaint, Defendants admit that Plaintiff has asked Defendants to provide an accounting; however, Defendants have no obligation to provide an accounting because they were not a party to the alleged 2008 oral agreement.

70. Defendants deny that Plaintiff is entitled to any relief sought in its prayer for relief.

71. Defendants deny any allegations in the Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Defendants affirmatively allege that the Complaint fails to state a claim against them upon which relief can be granted.

2. Defendants affirmatively allege that Plaintiff's claims are barred by its assumption of the risk, contributory negligence, comparative fault, set off, and unclean hands.

3. Defendants reserve the right to seek leave to amend to assert any further affirmative defenses that may come to light in the course of this lawsuit.

WHEREFORE, having fully answered the Complaint, Defendants NBG and Am Rhein respectfully demand that:

A. The Complaint be dismissed with prejudice; and

B. That Defendants NBG and Am Rhein have such other relief available under law and equity as the Court deems just and proper.

COUNTERCLAIM

Defendant Naturipe Berry Growers ("NBG"), for its counterclaim against Counterdefendant Agrolibhere S.A. de C.V. ("Agrolibhere"), alleges as follows:

1. NBG incorporates by reference herein the admissions, denials and allegations contained in its foregoing answer to the Complaint.

THE PARTIES, JURISDICTION, AND VENUE

2. NBG is a California corporation engaged in the business of marketing, growing and distributing fresh strawberries and strawberry related products..

3. Agrolibhere is a Mexican corporation with its principal place of business in Vicente Guererro, Baja California, Mexico.

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4. Agrolibhere has engaged in business within the State of California that is the subject of this Counterclaim.

5. This Court has jurisdiction over this Counterclaim by reason of diversity of citizenship pursuant to 28 U.S.C. § 1332, because the Counterclaim is between citizens of different states and the amount in controversy exceeds the $75,000 threshold and by virtue of Plaintiff's Complaint herein.

GENERAL ALLEGATIONS

6. Upon information and belief, Mr. Librado Heredia ("Heredia") is the owner of Agrolibhere.

7. At all times relevant hereto, Mr. Thomas R. Am Rhein ("Am Rhein") was the Vice President of Operations of NBG.

8. NBG is a part-owner of Naturipe Farms, LLC ("Naturipe Farms"), along with Hortifut, Inc. ("Hortifrut") and another company not named in this lawsuit. Naturipe Farms is a grower and marketer of various varieties of fresh produce, including, but not limited to, strawberries, raspberries and blackberries.

9. In 2006, NBG began investigating the possibility of expanding its strawberry related business to include operations in Baja California. Upon information and belief, Hortifrut also sought to do the same with respect to its raspberry and blackberry business.

10. In October 2006, Am Rhein, Heredia and a representative of Hortifrut met in San Diego, California. At that meeting, the parties orally agreed that Agrolibhere would grow a fixed number of acres of strawberries, raspberries, and blackberries for NBG. The berries would be planted in 2007 and harvested for distribution to the United States in 2008.

11. After harvest, Agrolibhere was to transport the berries to a cooling facility designated by NBG inside Orange County, California.

12. After NBG received the berries, Naturipe Farms was to market and distribute the berries.

13. NBG and Agrolibhere agreed that NBG would receive an eight percent (8%) sales commission for the berries sold.

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14. As part of the deal, NBG also agreed to provide crates and other packing materials to Agrolibhere as necessary and at Agrolibhere's discretion. Specifically, NBG agreed that it would provide cardboard shipping boxes to Agrolibhere with Naturipe Farms' logo and Agrolibhere's identification label attached thereon if requested. Payment for the crates, boxes, and other packing materials was to be taken out of the final sales price received for the berries in addition to the eight percent (8%) sales fee.

15. Agrolibhere was to receive all remaining revenues from the berries after the sales commission and the cost of the packing materials was paid to NBG.

THE MOU

16. In May 2007, the parties executed a Memorandum of Understanding (the "MOU") confirming their agreement. The MOU was executed by Am Rhein, on behalf of NBG, and Heredia, on behalf of Agrolibhere. Hortifrut was not a party to the MOU. A true and correct copy of the MOU is attached hereto as Exhibit "A."

17. Under the terms of the MOU, Agrolibhere was to harvest and ultimately deliver to a NBG facility in Irvine, California over 30 acres worth of strawberries grown in Colonia Vicente Guerrerro, Baja California. The same was also true for over 14 acres of raspberries and over 30 acres of blackberries.

18. Pursuant to the MOU, NBG was to receive the following for all berries received from Agrolibhere: an eight percent (8%) sales commission, its costs incurred in loading and unloading the berries, and the cost for packing materials supplied by NBG to Agrolibhere.

19. Agrolibhere also promised to provide NBG maps of the fields containing the subject strawberries, raspberries, and blackberries ninety (90) days before the harvest.

NBG PROVIDES AGROLIBHERE PACKING MATERIALS

20. In November 2007, NBG ordered packing materials, including cardboard boxes, from a Mexican company for the Agrolibhere harvest. Those packing materials were delivered to Agrolibhere and included the Naturipe Farms logo as agreed to in the MOU.

21. NBG spent $6,336.00 on those packing materials.

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AGROLIBHERE'S FAILURE TO PERFORM

22. Agrolibhere failed to provide NBG the field maps ninety (90) days before harvest.

23. In December 2007, NBG contacted Agrolibhere on numerous occasions attempting to get information regarding the harvests that were the subject of the MOU.

24. Agrolibhere was completely unresponsive to NBG's attempted contacts.

25. Upon information and belief, in February 2008, Agrolibhere started picking the strawberries from the fields in Colonia Vicente Guerrerro, Baja California, which were promised to NBG as part of the MOU.

26. On February 25, 2008, Am Rhein sent a letter to Heredia stating that NBG had not received any strawberries from the 2008 harvest and setting a conference call between the parties on Tuesday, February 26, 2008 to discuss the strawberry shipments.

27. Heredia never responded to Am Rhein's February 25, 2008 letter.

28. Agrolibhere did not send any strawberries from its 2008 harvest to NBG.

29. Upon information and belief, Hortifrut contacted Agrolibhere directly in or around February 2008 and discussed the terms upon which Agrolibhere would still provide the raspberries and blackberries referenced in the MOU to Naturipe Farms.

30. Upon information and belief, Hortifrut and Agrolibhere entered into an oral agreement regarding the distribution of the raspberries and blackberries from Agrolibhere to Hortifrut.

31. NBG was not a party to the oral agreement.

FIRST CAUSE OF ACTION

(Breach of Contract)

32. NBG incorporates herein by reference those allegations contained in paragraphs 1 through 31 of this Counterclaim.

33. NBG and Agrolibhere had an agreement under which Agrolibhere would plant and harvest 30 acres of strawberries for NBG. In 2008, Agrolibhere was to deliver the strawberries to a cooling facility designated by NBG in Orange County, California. NBG would then market the strawberries through Naturipe and would pay Algrolibhere the money received at market for the strawberries minus its sales commission. This agreement was memorialize in the MOU.

34. Despite being provided packing materials for the strawberries at NBG's expense, Agrolibhere failed to deliver any strawberries from its 2008 harvest to NBG.

35. NBG has fully performed all of its obligations under the agreement to the extent possible. NBG was at all times, however, prepared to fulfill its obligations under the agreement in the event that Agrolibhere actually performed.

36. Agrolibhere breached the agreement by failing to send NBG the strawberries.

37. As a result of Agrolibhere's breach, NBG has suffered damages, including:

(a) Lost profits on the anticipated revenues from the strawberries Agrolibhere was to provide NBG from its 2008 harvest. The amount of the lost profits will be determined at trial, but is estimated to not be less than $86,000.00.

(b) Out-of-pocket expenses incurred by NBG to provide packaging materials to Agrolibhere for berries that were not received in the amount of $6,336.00.

DEMAND FOR JURY TRIAL

NBG demands a trial by jury on all causes of action in the Complaint and all causes of action in this Counterclaim.

WHEREFORE, NBG demands that judgment be entered as follows:

A. For damages in an amount to be determined at trial representing NBG's loss of profits resulting from Agrolibhere's breach of the agreement, but that is not estimated to be less than $86,000.00;

B. For damages in the amount of $6,336.00 for out-of-pocket expenses incurred in providing Agrolibhere packaging materials for products that were not ultimately provided by Agrolibhere to NBG; and

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C. For such other relief available in law and equity as the Court determines to be just and proper.

Dated: September 4, 2008

HERRON & STEELE
A Professional Corporation

By: [signature]
Matthew V. Herron
Attorneys for Defendants NATURIPE BERRY GROWERS and THOMAS R. AM RHEIN

VERIFICATION

I, Thomas R. Am Rhein, the undersigned, declare as follows:

I am the Vice President of Operations of Naturipe Berry Growers a Defendant/ Counterclaimant in the above-entitled action; I have read the foregoing ANSWER TO COMPLAINT AND COUNTERCLAIM and know the contents thereof. I declare that the same is true of my own knowledge, except as to those matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct according to the best of my information and belief.

Executed on SEPT. 4, 2008, at SAN JOSE, California.

NATURIPE BERRY GROWERS

By: ______________________

Thomas R. Am Rhein

Its: Vice President of Operations

VERIFICATION

I, Thomas R. Am Rhein, the undersigned, declare as follows:

I am a Defendant in the above-entitled action; I have read the foregoing ANSWER TO COMPLAINT and know the contents thereof. I declare that the same is true of my own knowledge, except as to those matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct according to the best of my information and belief.

Executed on SEPT. 4, 2008, at SAN JOSE, California.

[signature]

Thomas R. Am Rhein

naturipe

P.O. Box 4280 Salinas, CA 93912-4280
Office: 831-785-5913 **Mobile:** 831-970-7919 **Fax:** 831-728-9398 **E-mail:** toma@naturipe.com

Lunes 14 de Mayo, 2007

Este documento resume los términos de entendimiento bajo los cuales Naturipe Berry Growers y Agro Libhere, S.A. de C.V. (agricultor) acuerdan comercializar los cultivos de fresa, frambuesa y zarzamora plantados en el 2007.

Los cultivos pertenecientes a Agro Libhere S.A. de C.V. que serán plantados en el año 2007 destinados a ser comercializados por Naturipe son los siguientes:

Fresa: 15 hectáreas localizadas en Colonia Vicente Guerrero, Baja California

Frambuesa: ± 7 hectáreas localizadas en Colonia Vicente Guerrero, Baja California

Zarzamora: ± 15 hectáreas localizadas en Colonia Vicente Guerrero, Baja California

Agro Libhere proporcionara mapas de los cultivos mencionas indicando su ubicación exacta al menos 90 días antes de la cosecha.

Thomas R. Am Rhein,
V.P. Operations,
Naturipe Berry Growers

Fecha
14 DE MAYO, 2007

Agro Libhere, S.A. de C.V.

Fecha
Mayo 14, 2007

Cosecha

Durante la cosecha Naturipe tiene la obligación de supervisar las buenas prácticas agrícolas del productor para asegurar la inocuidad del producto, así como de proporcionar un programa de buenas prácticas agrícolas, entrenamiento e información (procedimientos, letreros etc.) a las personas en contacto con el producto.

El agricultor acuerda seguir el programa de buenas prácticas agrícolas proporcionado por Naturipe y permitir al personal de Naturipe inspeccionar su correcta implementación.

El agricultor es responsable de obtener certificación PRIMUS. A cuenta de Naturipe T.A.

El agricultor acuerda marcar cada caja de cartón con el código de rastreabilidad (Anexo 1)

Materiales de Empaque

Materiales de empaque como caja de cartón, canasto de plástico y tarimas "Chep" estarán disponibles para el agricultor. Naturipe podrá proveer al agricultor cajas de cartón con el logo de Naturipe Farms y con la identificación del agricultor, pero este inventario tendrá que ser liquidado es su totalidad. El productor también tiene la opción de comprar insumos si cumplen con las especificaciones de Naturipe Farms, LLC (dimensiones, colores, tinta etc.) (Anexo 6) Naturipe acuerda determinar precios 60 dias antes de la cosecha. T.A.

Pre-enfriado

El pre-enfriado es llevado a cabo por parte del agricultor

Transporte

El agricultor se encarga de transportar el producto al punto de entrega preferentemente a una temperatura entre 32 y 36 grados F.

Descarga

Punto de Entrega: Naturipe Irvine, CA. Cualquier otro punto de entrega alternativo designado por Naturipe será notificado al agricultor con anticipación. Dentro del condado de Orange T.A.

Naturipe tomara la temperatura de la fresa antes de descargar. El agricultor acuerda entregar el producto a una temperatura de 32 a 36 grados F. de no ser así el producto será pre-enfriado a cuenta del agricultor. (Estimado a 50 centavos de dólar por caja)

Una vez descargado el producto Naturipe toma posesión del mismo.

Evaluación de Calidad

Naturipe acuerda evaluar la calidad de los frutos siguiendo los parámetros de muestro y evaluación establecidos (ver anexo 2 y 3)

Naturipe acuerda evaluar la fruta en cuarto frio de San Quintin TA

Consolidación

Todo producto con las mismas características (misma calidad, tipo de empaque, procedencia y variedad) forma parte de una centralización para determinar precio promedio y ajustes. Existen dos centralizaciones por semana. Es decir todo producto de las mismas características entregado y vendido en un periodo de tres días será promediado para determinar precio promedio y ajustes de calidad.

Cuando el producto es evaluado como de "segunda" calidad es separado y no se promedia con ningún otro producto.

Formas de Pago

Naturipe acuerda liquidar la fruta de "primera" calidad 7 días después del cierre de la segunda centralización, después de descontar gastos de: comisión de venta (8%), carga y descarga, materiales de empaque (cartón y canastos) y reintegro (~~$1.25~~) $1.00. Es decir todo producto entregado en una semana (Domingo a Sábado o dos centralizaciones) será pagado el siguiente Viernes. El remanente del reintegro será liquidado a los 90 días. Anexo 4 explica con más detalle.

La fresa de "segunda" calidad se liquida en su totalidad unas vez que la cuenta sea cobrada o a los 90 días, lo que ocurra primero. (Anexo 4)

Naturipe acuerda hacer el depósito por concepto de venta en una cuenta de banco de los Estados Unidos.

Reportes de Producción

Los resultados de evaluación de calidad estarán disponibles En cuarto frío al productor vía fax tan pronto como se termine de hacer la evaluación. En caso de recibir evaluación de "segunda" el productor será notificado vía telefónica. (Anexo 5)

Un reporte de producción y resumen de calidad es generado una vez por semana.

Por cada depósito realizado, el productor recibe un reporte que contiene: cantidad de cajas, monto depositado y precio promedio que comprende cada depósito.

Regalías y Propiedad Intelectual

(Anexo 6)

Anexo 1

Naturipe Berry Growers
Código de Rastreabilidad
Baja California 2007

__LLLLL__ = Lote asignado (Cinco Números)

__MM___ = Los siguiente dígitos son para el mes en el que se está cosechando.

__DD____ = Los últimos dos dígitos son para el día de cosecha.

Código
LLLLLMMDD

Ejemplo #1:

San Quintín / Vicente Guerrero B.C.
Lote: 19793
Cosechando el día 30 de Enero, 2007

El código será: 197930130

Ejemplo #2
San Quintín / Vicente Guerrero B.C.
Lote 19627
Cosechando el día 21 de Febrero

El código será: 196270221

Anexo 2

NATURIPE GRADING SYSTEM

SAMPLING & GRADING PROCEDURES

Sampling procedures must be applied uniformly & use a statistically valid sample. The system must be able to be used at the peak of the season when high volumes are being picked. Grading will be done at the cooler, but field representatives will use the same grading standards to conduct field inspections whenever possible.

INSPECTION PROCEDURES BY THE GRADER:

1. Inspect 1 tray per pallet. Draw one clamshell from a tray per pallet. Do not inspect any two trays from same picker.
2. Inspect the following number of pallets/load:

1 Sample = 2 – 1 lb. clamshell or 3 pints containers, 1-2lb. clamshell, 1 – 4lb. clamshell

1 TO 3 PALLETS/LOAD = Draw 2 samples from 3 Pallets

4 TO 6 PALLETS/LOAD = Draw 3 samples from 6 Pallets

7 TO 9 PALLETS/LOAD = Draw 4 samples from 8 Pallets

10 TO 12 PALLETS/LOAD = Draw 5 samples from 10 Pallets

13 TO 14 PALLETS/LOAD = Draw 6 samples from 12 Pallets

3. Select random trays below top tier.
4. Empty the sample on clean grading tray.
5. Count & evaluate berries & enter data on the grading sheet for each tray inspected.
6. Minimum strawberry count per sample to be graded is:

8 oz; 1 lb; & 2 lb containers = 30 strawberries
Pint container = 45 strawberries

7. Return or substitute fruit to pallet.
8. Give the load a visual inspection to see if sample is representative. If not, inspect another tray at random. If grade is "standard" or "reject", Re-sample the load by drawing two (2) more regular or normal sample size.
9. Total/consolidate all inspections onto a single grading sheet for the entire load or partial loads (1 pallet minimum) and calculate the grade for the load. Partial loads by pallet may be graded if sufficient differences in quality exist between pallets.
10. Distribute copies of grading sheet: #1 to grower, #2 to office.

Anexo 3

Naturipe Berry Growers
Protocolo Evaluación de Calidad
Baja California

Fresas provenientes de Baja California serán evaluadas como de Primera o Segunda calidad.

Requerimientos para que el producto sea clasificado como de "Primera"

- Conteo máximo por canasto de una libra: 26 fresas

- Defectos Mayores:
  Pudrición/descomposición: Ninguno
  Residuo líquido: Ninguno
  Gusanos/Larvas: Ninguno

- Magulladuras, Maduración en exceso: Máximo 5% del conteo.

- Se consideran defectos menores: fresas partidas, deformes, daño por insecto, bronceadas, verdes, quemadas por el sol o viento, lodo.

- Defectos totales (mayores y menores): 12.99% máximo del conteo

- Temperatura máxima al recibir el producto: entre 32 F y 36 F

El método de muestreo utilizado será el establecido por Naturipe

Naturipe Berry Growers
Protocolo Evaluación de Calidad
Baja California
Frambuesas y Zarzamoras

Frambuesas y Zarzamoras provenientes de Baja California serán evaluadas como de primera y segunda calidad.

Requerimientos para que la fruta sea evaluada como de "primera" calidad

- Conteo máximo por canasto: No aplica
- Defectos Mayores: 5% máximo del conteo
  - Pudrición/descomposición: 1% máximo
  - Residuo líquido
  - Gusanos/Larvas
  - Tallos
  - Fruta verde

- Defectos Menores: 12% máximo del conteo

Defectos totales: mayores y menores 12.99%

- Temperatura máxima al recibir el producto: entre 32 F y 36 F

El método de muestreo utilizado será el establecido por Naturipe

Naturipe
Definiciones de Calidad

La calidad es definida por estándares objetivos y parámetros fijos que reflejan la calidad de la fruta.

1.- Para empaque regular existen dos calidades: Primera y Segundas calidad

2.- Empaques especiales deberán ser empacados con calidad de "primera". Empaques especiales que no cumplan los requerimientos de primera podrán ser vendidos a discreción del departamento de ventas.

Calidad:

Primera Calidad: Es determinada por el tamaño y color. La fruta deberá ser de color uniforme, con al menos 85% de la superficie de la fruta de color rojo.
Con altas temperaturas e indicado por Naturipe la especificación podrá cambiar de rojo a salmón y a un 75% de maduración.

El límite de fresas por canasto es:

Tipo de Canasto	Numero de fresas (máximo)
8 Oz.	14 fresas
"Pints"	24 fresas
1 Libra	26 fresas
2 Libras	52 fresas
4 Libras	90 fresas

Fresas con un diámetro no menor a una pulgada en todos los casos.

La fruta de primera calidad debe ser libre de defectos "mayores", con una tolerancia de hasta 12.99% del total de defectos incluyendo mayores y menores. Es permitido un máximo de 5% de magulladuras mayores. Cero tolerancia para pudrición, descomposición, residuo liquido, gusanos y larvas.

Segunda Calidad: Porcentaje máximo de defectos mayores y menores de 20.99% del conteo. 4% máximo de pudrición, descomposición, residuo liquido, gusanos y larvas. Porcentaje de defectos mayores permitido del 10%. El conteo no podrá exceder 33 fresas por canasto de una libra.

Major Defects (Defectos Mayores) – Podrido/Descomposición avanzada, moho, magulladuras severas, residuo liquido, gusanos y fruta albino. Otros defectos podrán ser considerados como mayores si el daño es severo. Defectos mayores son calculados al doble (X2)

Other Defects (Otros Defectos) – Sobre maduración, magulladuras leves, fruta blanda, fruta verde/blanca, deforme (chueca), daño por insecto, daño por aves, sin corona (hoja), corona seca, fruta con orificios etc. Otros defectos son calculados por uno (X1).

Minor Defects (Defectos Menores) – Se consideran defectos menores fruta verde, deforme, tamaño pequeño, tierra, quemadura del sol, fruta "bronceada", quemadura por aspersión, quemadura causada por viento. Defectos menores son calculados por uno (X1).

Size (Tamaño) – El tamaño de la fruta es un factor de calidad importante. En canastos de una libra el conteo máximo para "primera" calidad es de 26 fresas y el conteo máximo para "segunda" calidad es de 33 fresas por canasto.

Color (Color) – Color rojo o rosa (salmón) uniforme, color rojo en toda la superficie de la fresa es deseable, pero en condiciones con altas temperaturas un color rosa o salmón uniforme es aceptable al menos en un 85% de la superficie para considerarse de "primera" calidad. 75% o menos es considerado como "verde" (defecto menor). Albinos es considerado como defecto menor.

Rot/Decay (Podrido/Descomposición Avanzada) – incluye moho, hongo, fruta en estado de descomposición. Considerado como defecto mayor.

Leaker (Residuo Líquido) – Indicios de liquido o jugo en la caja de cartón y/o el canasto causado por sobre maduración, magulladuras severas, o descomposición. Considerado como defecto mayor.

Bruising (Magulladuras) – Daño mecánico causado durante el empaque o transportación, evitar empacar fruta en exceso. Magulladuras severas son consideradas como defecto mayor.

Overripe (Sobre Maduración) - Color rojo intenso, fruta con vida de anaquel considerablemente reducida.

Soft (Fruta Blanda) – Fruta blanda susceptible a magulladuras.

Split (Partidas) – partidas dejando visible el interior, es considerado un defecto mayor. Fresas partidas en el centro de la corona es considerado como "otros defectos"

Defect (Defecto) – Cualquier daño, residuo o deformidad que causa un apariencia inaceptable.

Damage (Daño) - magulladuras, partidas, daño por insecto o ave.

Deformed (Deforme) – "cara de gato" fruta partida, chueca etc. Dependiendo de que tan severo sea el desperfecto puede ser considerado como daño mayor o menor.

Condition (Condición) –Es una media de vida de anaquel y resistencia en el transporte. Una fruta de condición "débil" podrá ser enviada a los mercados locales.

Green (Verde) – Fresas con un 75% de color rojo o menos, o con un 75% de color rojo/salmón cuando sea especificado.

White Shoulder ("hombrillo") – Parte superior de la fresa de color verde o blanco.

White Tip (Punta Blanca) – fresa con punta blanca mayor a 3/8" de la superficie es considerado como defecto.

Burn (Quemadura) – "bronceado" causado por sol, viento, o aspersión de agroquímicos.

Capped/Missing Calyx (Sin Corona) – Sin corona (hojas).

Sheen (Fresa brillosa) – Fresa con apariencia brillosa indica problemas de temperatura y perdida de humedad.

Deceptive Pack (Empaque Variable) – cuando una caja o varias cajas muestran características variables de calidad (tamaño, color, etc.), o cuando las fresas de mejor calidad son puestas en la parte superior dejando la fresa de mala calidad en la parte inferior del canasto. El acomodar la fresa dentro del canasto para mejorar su apariencia no se considera como empaque variable (Deceptive pack).

Slack Pack – Canastos bajos de peso o a medio llenar.

Facing – Orientación uniforme de la fresa para mejorar su apariencia.

Anexo 4 Ejemplo de Liquidación J-M.

	Primera Calidad		
	Costos estimados de Venta y Materiales		
1	Promedio estimado de venta		$10.00
2	Comisión de Venta	8%	-$0.80
3	Materiales de Empaque (estimado)		-$1.65
4	~~Carga~~ y Descarga		-$0.25
5	Reintegro $1.00		-$1 ~~25~~
6	*"Precio de Campo"*		$6.05
7	Reintegro al productor		$0.55
	Total		$6.60

Reintegro	1.25
Tarima y Separadores	-0.1
Ajustes	-0.6
	0.55

(Promedio estimado de ajustes)

1. Precio estimado de venta
3 El costo del material varia dependiendo del tipo
4. ~~Carga~~ y Descarga (In & ~~Out~~ cost)
5. Reintegro incluye separadores, tarima y ajustes
6. Precio de Campo depositado a los 7 dias

1. Precio estimado de venta
3. El costo del material varia dependiendo del tipo
4. Carga y Descarga (In & Out cost)
5. Reintegro incluye separadores, tarima y ajustes
6. Precio de Campo depositado a los 7 días
7. Remanente del reintegro depositado a los 90 días

	Segunda Calidad		
	Costos estimados de Venta y Materiales		
1	Precio de venta final		$8.00
2	Comision de Venta	8%	-$0.64
3	Materiales de Empaque		-$1.65
4	Carga y Descarga		-$0.25
5	Reintegro		$0.00
6	*"Precio de Campo"*		$5.46
7	*Total*		$5.46

5. Ningun reintegro es retenido
7.Liquidado una vez que se cierre la cuenta o a los 90 dias

Anexo 5 Formato utilizado para determinar la calidad de la fruta

Time Received:______:____
Time Precooled:______:____

NATURIPE BERRY GROWERS
STRAWBERRY GRADING SHEET

Berry Temp.:________°F
Air Temp.:________°F

DATE: __________ TIME: __________ GRADER: ____________________
GROWER: ____________________ GROWER LOT #: __________ DAY CODE: __________
VARIETY: ____________ LABEL____________ PACK STYLE: __________ GRADE: __________

Production year	# Full Pallets	Crates/Pallet	# Partial Palalets	Crates/Pallets	Tootal Crates
1st 2nd					
Picker #					

SHELF LIFE CONDITION: FIRM / LOCAL

FACTOR						
TOTAL BERRIES						
AVERAGE/BASKET						
WEIGHT						

MAJOR DEFECTS

FACTOR	1	2	3	4	5	6
ROT/DECAY						
MAJOR BRUISING						
LEAKERS						
ALBINO						
INSECT/S						

NUMBER MAJOR DEFECTS: __________ X2 = TOTAL MAJOR DEFECTS: __________

MINOR DEFECTS

FACTOR	1	2	3	4	5	6
SMALL SIZE						
DEFORMED						
SPLITS						
INSECT DAMAGE						
BRONZING						
MINOR BRUIISING						
MILDEW						
GREEN						
BURN(WIND/SUN/SPRAY)						
DRY CALYX						
NO CALYX						
WATER DAMAGE						
MUD/DIRT/DUST						

TOTAL MINOR DEFECTS:________ TOTAL MAJOR & MINOR DEFECTS:________ TOTAL BERRIES INSPECTED:________÷ TOTAL BERRIES DEFECTIVE: __________ = % DEFECTIVE: __________

COMMENTS: ____

ORIGINAL—GROWER COPY

Anexo 6

Regalías

Naturipe Berry Growers cobrará y percibirá y/o recaudará, según corresponda, los royalties que se deban al respectivo titular de los derechos de propiedad intelectual de la variedad F-54 ó Marcela, así como también los impuestos que lo graven. Dicho Royalty y gravámenes serán a costa del PRODUCTOR en los términos, condiciones y oportunidad estipulados en el presente contrato.
a) La variedad F-54 objeto del presente contrato, paga un Royalty por la producción de las plantas objeto de este contrato por el plazo de 3 años, equivalente a 0,05 de libras esterlinas por cada kilo exportado, más la suma fija de 175 libras esterlinas por productor, a la vez si corresponde se debe pagar el impuesto al Royalty extranjero que equivale a un % del valor total del Royalty. El productor esta obligado al pago del royalty referido por todo el plazo estipulado en el acuerdo, más los años posteriores de producción, para lo cual el PRODUCTOR entregará cada año a NBG toda la información acerca del número de cajas vendidas al extranjero y cual es el destino final de dichas cajas con el fin de facilitar el cálculo del royalty antes referido, El royalty y el impuesto indicado deberá ser pagado por el PRODUCTOR a más tardar el día 30 de junio de cada año.
Al valor total de este Royalty se agrega el impuesto valor agregado (IVA),
El referido royalty se pagará por NBG al titular de los derechos de propiedad intelectual de la variedad a costa del PRODUCTOR, más el Impuesto al Valor Agregado u otros similares (incluye impuesto al royalty).

Propiedad Intelectual

EL PRODUCTOR declara conocer y aceptar expresamente la propiedad licencia o autorización le pertenece de manera exclusiva a NBG, según corresponda, sobre los derechos intelectuales de la variedad vegetal a la que pertenecen las PLANTAS, como también la propiedad de NBG sobre la materialidad de tales PLANTAS. En consecuencia, el PRODUCTOR se obliga a respetar irrestrictamente y en todo momento los respectivos derechos y su exclusividad, como también a mantener absoluta confidencialidad sobre la información que reciba con motivo de la ejecución del presente contrato, respondiendo de todo perjuicio que su incumplimiento cause a NBG y/o a terceros. Asimismo se obliga a respetar y no realizar ningún acto que pudiere perjudicar la protección de los derechos del obtentor y/o de NBG sobre la variedad F54 o Marcela.

MATTHEW V. HERRON #71193
ROBERT M. STEELE #163027
HERRON + STEELE, APC
350 Tenth Avenue, Suite 880
San Diego, California 92101
Telephone: (619) 233-4122
Facsimile: (619) 233-3709

Attorneys for Defendants NATURIPE BERRY GROWERS and THOMAS R. AM RHEIN

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AGROLIBHERE S.A. de D.V., a Mexican Corporation; Plaintiff, v. NATURIPE BERRY GROWERS, an unknown business entity; NATURIPE FARMS, an unknown business entity; NATURIPE FARMS BY HORTIFRUIT, an unknown business entity; HORTIFRUIT, an unkown business entity; HORTIFRUIT IMPORTS, an unknown business entity; THOMAS R. AM RHEIN, an individual; and JUAN FERRARI PALLOMARI, an individual; Defendants. ___ NATURIPE BERRY GROWERS, a California corporation; Counterclaimant, v. AGROLIBHERE S.A. de D.V., a Mexican Corporation; Counterdefendant.	Case No. 08-CV-01321 JAH NLS **PROOF OF SERVICE**

///

I, Tammy Dos Santos, declare that:

I am and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action. I am employed in the County of San Diego, California. My business address is 350 Tenth Avenue, Suite 880, San Diego, California 92101.

On September 4, 2008, my actions of electronically filing the following documents in Case No. 3:06-cv-02254-DMS-POR with the Clerk of the District Court resulted in service by the ECF System electronically notifying the following:

Jimmy Ray Ayers, Jr. of SCUDI JOHNSON & AYERS, LLP
Email: javers@scudilaw.com
Counsel for Plaintiff/Counterdefendant AGROLIBHERE S.A. de C.V.

The following documents were served:

ANSWER TO COMPLAINT AND COUNTERCLAIM - DEMAND FOR JURY TRIAL

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 4, 2008 at San Diego, California.

Tammy Dos Santos